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Paper No. 10

PATTI & BRILL
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CHICAGO, IL 60602

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SEP 29 2003

OFFICE OF PETITIONS

In re Application of:	:	
Krishna Balachandran, Subrahmanyam	:	
Dravida, Richard P. Ejzak,	:	
Sanjiv Nanda, Shiv Seth and	:	
Stanley Vitebsky	:	DECISION REFUSING
Application No.: 09/517,907	:	STATUS
Filed: March 3, 2000	:	UNDER 37 CFR 1.47(a)
Title of Invention: METHOD AND	:	
DEVICE FOR MAC LAYER FEEDBACK IN A	:	
PACKET COMMUNICATION SYSTEM	:	

This is in response to a petition under 37 CFR 1.47(a), filed September 8, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 3, 2000, with a defective oath or declaration. Applicant was notified, of the deficiencies in the oath or declaration, *inter alia*, in an Office action mailed on June 5, 2003.

In response to the Office action, Applicant files the instant petition and Declaration and Power of Attorney. The petition avers that diligent effort was made to contact and request execution of the Oath or Declaration by the nonsigning inventors. In support of this assertion, the Declaration of

Laura A. Hernandez is filed with the petition. The Hernandez Declaration provides that the application, Assignment, and Declaration and Power of Attorney were sent via Federal Express to the nonsigning inventors last known address, but that the nonsigning inventors no longer lived at the last known addresses. The Hernandez Declaration also provides that a telephone number was the only forwarding information available for nonsigning inventor Sanjiv Nanda, but the telephone number had been disconnected. No forwarding information was available for nonsigning inventor Subrahmanyam Dravida.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) and (2).

As to item (1), the petition states that the nonsigning inventor cannot be located.

Petitioner is advised that 37 CFR 1.47(a) provides for two separate and distinct circumstances: one where the inventor refuses to join the application after having been presented with the application for signature, and the other where an inventor cannot be found or reached after diligent effort.

If an inventor is unavailable (cannot be reached), while it is not required that the application be mailed, Petitioner must establish the exercise of diligent effort in trying to find or reach the nonsigning inventor. A statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. Emphasis supplied. See, MPEP § 409.03(d). At the very least, an Internet search, or a search of telephone directories should be undertaken of the regions where it is suspected the non-signing inventor may reside. Copies of the results of such searches must be referred to in any renewed petition. *It is important that the forthcoming communication*

contain statements of fact as opposed to conclusions. (Emphasis supplied).

As to item (2), Applicant has failed to provide an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116. A review of the Declaration and Power of Attorney filed with the petition reveals that the page containing the signature provided for inventor Shiv Seth is unrelated to the Declaration and Power of attorney that the page has been attached to by a staple. The page, Notarized in the State of Illinois on August 25, 2003 as having "executed the foregoing instrument", is ambiguous as to exactly which foregoing instrument the signature refers to as putatively having been executed.

Page number seven of the Declaration and Power of Attorney filed with the Petition is missing. All of the page numbers in the Declaration and Power of Attorney filed with the instant petition are numbered at the top, save the page number containing the signature of inventor Shiv Seth. The page number containing inventor Shiv Seth, which is inserted into the Declaration and Power of Attorney where page seven apparently should be, is numbered at the bottom as page six. The Declaration and Power of Attorney filed with the petition contains a page six, numbered at the top of the page, consistent with the other pages of the Declaration and Power of Attorney. The next page following the page with inventor Shiv Seth's signature, contains the signature of inventor Stanley Vitbesky, and is numbered at the top as page eight.

Moreover, the page containing the signature of inventor Sviv Seth does not indicate that he is an inventor. The other pages of the Declaration and Power of Attorney indicate that each inventor is a joint inventor. It is therefore ambiguous at best that the page numbered page six at the bottom and executed by inventor Shiv Seth is part of the same Declaration and Power of Attorney filed with the instant petition, save a staple.

A properly executed oath or declaration is required.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA 22202-3113

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.


Derek L. Woods
Petitions Attorney
Office of Petitions